

MACOMB TOWNSHIP ZONING BOARD OF APPEALS
MINUTES OF A SPECIAL MEETING HELD
JULY 24, 2007

LOCATION: MACOMB TOWNSHIP MEETING CHAMBERS
54111 BROUGHTON ROAD, MACOMB, MI 48042

PRESENT: CHAIRMAN, BRIAN FLORENCE
MEMBERS: EDWARD GALLAGHER
NUNZIO PROVENZANO
VICTORIA SELVA

ABSENT: DAWN SLOSSON

ALSO PRESENT: COLLEEN O'CONNOR, TOWNSHIP ATTORNEY
JEROME R. SCHMEISER, PLANNING CONSULTANT
(Additional attendance record on file with Clerk)

Call Meeting to Order.

Chairman FLORENCE called the meeting to order at 7:02 P.M.

1. Roll Call.

Member SELVA called the Roll Call. Secretary SLOSSON absent.

2. PLEDGE OF ALLEGIANCE.

3. Approval of Agenda Items. *(with any corrections)*
Note: All fees have been received and all property owners were notified by mail

MOTION by PROVENZANO seconded by SELVA to approve the agenda as presented.

MOTION carried.

4. Approval of the previous meeting minutes:

MOTION by SELVA seconded by GALLAGHER to approve the meeting minutes of July 10, 2007 as presented.

MOTION carried.

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PURPOSE OF HEARING:

To consider the requests for variance(s) of Zoning Ordinance No. 10 for the following:
Agenda Number/Petitioner/ Permanent Parcel No. Zoning Ordinance Section No.

- (5) Tom and Kim Dahl Section 10.0704(D)(3)(B)
 Permanent Parcel 08-06-278-012

5. **VARIANCE FROM THE PROVISION OF THE ZONING ORDINANCE;**
 Section 10.0704(D)(3) Request to reduce the rear yard setback from 35' to 30.4'
 Located on Lot 70 in the Villagio Subdivision, on the west side of Romeo Plank
 Road, 1/3 mile south of 26 Mile Road. Address of Property: 56074 Lario Court;
 Permanent Parcel No. 08-06-278-012; Tom and Kim Dahl, Petitioner.

Chairman FLORENCE read the findings and recommendation of July 19, 2007. They are as follows:

The petitioner is requesting permission to retain a patio (with foundation) on the above described property. The proposed patio would project approximately 5' into the rear yard.

The original site plan (copy attached) submitted in connection with the building permit process did not show the proposed patio. The Township issued a permit based upon the attached plan submitted that met the zoning ordinance. See Township stamp with initials and dates on the plan approved by the Building Department, Planning Consultant and Engineering Consultant.

Since the time of the original permit, the house was constructed and the patio added without benefit of a building permit, inspection or any approvals. The Building Division has issued a "stop work" order on the parcel as a result of the non-compliance.

RECOMMENDATION:

It is recommended that the variance request be denied for the following reasons:

1. Compliance with the strict letter of the rear yard setback requirement would not unreasonably prevent the ownership from using the property as zoned. Other patio structures planned in Macomb Township will be required to comply with the same setback requirements, which is evidence that the proper compliance with the zoning ordinance would not be unnecessarily burdensome.

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2. The granting of a variance as requested would give to the applicant an advantage or benefit not received by any other property owners in similar developments in Macomb Township. The other owners are or will be required to comply with the setback requirement. As a result the other property owners do not have the opportunity to make use of additional rear yard for construction purposes.
3. There is nothing unusual about the parcel in question that sets it apart from other parcels in area or in Macomb Township. There is nothing to prevent any part of the patio from meeting the requirements of the zoning ordinance. For example, there are no significant grade differences or natural feature such as a stream or wetland to prevent full use of the parcel according to the ordinance as written.

Jerome R. Schmeiser, Planning Consultant, gave a brief overview using the overhead projection of the surrounding area and the approximate location of the lot within the subdivision.

Kim and Tom Dahl, petitioner's were present.

Kim Dahl stated that in May of 2006 they had submitted their drawings to the Building Department which showed the patio in question. However, the first submittal showed the garage to be too large which caused a revision to the drawings to correct the square footage of the garage. Those plans were then resubmitted in July of 2006. When the revision took place the patio was left off the plot plan unbeknownst to them and were approved.

Construction then commenced. She indicated she had taken pictures as the house progressed and presented them to the Board. The first picture she presented was the foundation which shows the lead walls which indicates that there would be a patio. She stated, never was a question brought up about the lead walls or the patio during its construction or while the bricking took place. She stated, "We received a "Stop Work" order just before the top was to be poured. We then came to the Township to find out how to rectify the problem, which has brought us here."

She finalized by stating the hardship which is that they can't use or enjoy their house to its fullest potential.

Member PROVENZANO asked her about her letter of explanation in which she indicated she had looked at Lot 71 but saw that there were restrictions. Was that not researched for Lot 70?

Kim Dahl stated the Architect indicated to them that with everything they desired to have done they would encroach into the setback requirements on Lot 71, but that it would fit on Lot 70, per her architect..

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Member SELVA stated the site plan (plot plan) must show or mirror what is on the blueprint.

Kim Dahl questioned why it would have taken from July of 2006 to June of 2007 to discover the patio when we had lead walls constructed from the commencement of the house.

Member PROVENZANO stated the practical difficulty must be burdensome to you. It must not be a financial difficulty. You need to present a practical difficulty which indicates you can't use the property as created. Complying with the rear yard setback will not prohibit you from using your lot or home.

Kim Dahl stated only the stairs from the patio are in the easement.

Colleen O'Connor, Township Attorney, stated a practical difficulty is not a monetary issue. She further went on to indicate that if you were not to receive the requested variance you would still be able to use your home. There are other options available to you, such as taking off part of the patio or redoing the entire patio.

Kim Dahl stated she could not understand how the lead walls were originally constructed in July of 2006 but was not found until the point of pouring the top of the patio.

Member SELVA stated you have an approved plot plan which shows that there is no patio.

Public Portion: None.

MOTION by SELVA seconded by PROVENZANO to close the public portion.

MOTION carried.

MOTION by PROVENZANO seconded by GALLAGHER to deny the variance request of Section 10.0704(D)(3)-Request to reduce the rear yard setback from 35 feet to 30.4 feet; Located on Lot 70 in the Villagio Subdivision, on the west side of Romeo Plank Road, 1/3 mile south of 26 Mile Road; Section 6; Tom and Kim Dahl, Petitioners. Permanent Parcel No. 08-06-278-012. The variance was denied since a financial burden is not a practical difficulty, the property can be used as zoned without the granting of the variance along with Planning Consultants recommendations as follows:

- 1. Compliance with the strict letter of the rear yard setback requirement would not unreasonably prevent the ownership from using the property as zoned. Other patio structures planned in Macomb Township will be required to comply with the same setback requirements, which is evidence that the**

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proper compliance with the zoning ordinance would not be unnecessarily burdensome.

- 2. The granting of a variance as requested would give to the applicant an advantage or benefit not received by any other property owners in similar developments in Macomb Township. The other owners are or will be required to comply with the setback requirement. As a result the other property owners do not have the opportunity to make use of additional rear yard for construction purposes.**
- 3. There is nothing unusual about the parcel in question that sets it apart from other parcels in area or in Macomb Township. There is nothing to prevent any part of the patio from meeting the requirements of the zoning ordinance. For example, there are no significant grade differences or natural feature such as a stream or wetland to prevent full use of the parcel according to the ordinance as written.**

MOTION carried.

6. OLD BUSINESS

None.

7. NEW BUSINESS

Jerome R. Schmeiser, Planning Consultant, stated the next regular meeting is scheduled for September 11, 2007.

8. PLANNING CONSULTANTS COMMENTS

None.

9. MOTION TO RECEIVE AND FILE ALL CORRESPONDENCE IN CONNECTION WITH THIS AGENDA

MOTION by GALLAGHER seconded by SELVA to receive and file all correspondence.

MOTION carried.

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ADJOURNMENT

MOTION by SELVA seconded by GALLAGHER to adjourn the meeting at 7:35 p.m.

MOTION carried.

Respectfully submitted,

Brian Florence, Chairman

Beckie Kavanagh, Recording Secretary

/bk